

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERIK KESSACK,

Plaintiff,

CASE NO. C25-5105 BHS

ORDER

WASHINGTON STATE
DEPARTMENT OF CORRECTIONS,
et al..

Defendant.

THIS MATTER is before the Court on Magistrate Judge Grady J. Leupold's Report and Recommendation (R&R), Dkt. 6, recommending the Court GRANT pro se plaintiff Erik Kessack's application to proceed *in forma pauperis*, Dkt. 1, and dismiss his 42 U.S.C. § 1983 claims against the Department of Corrections because it is not a "person" for purposes of that statute.

Kessack objects, but he does not address the R&R's reasoning.

A district judge must determine de novo any part of a magistrate judge's proposed disposition to which a party has properly objected. It must modify or set aside any portion of the order that is clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a).

1 The district judge may accept, reject, or modify the recommended disposition;
2 receive further evidence; or return the matter to the magistrate judge with instructions.
3 Fed. R. Civ. P. 72(b)(3). A proper objection requires “specific written objections to the
4 proposed findings and recommendations” in the R&R. Fed. R. Civ. P. 72(b)(2). “[I]n
5 providing for a de novo determination . . . Congress intended to permit whatever reliance
6 a district judge, in the exercise of sound judicial discretion, chose to place on a
7 magistrate’s proposed findings and recommendations.” *United States v. Raddatz*, 447
8 U.S. 667, 676 (1980) (internal quotation marks omitted). Accordingly, when a district
9 court adopts a magistrate judge’s recommendation, the district court is required to merely
10 “indicate[] that it reviewed the record de novo, found no merit to . . . [the] objections, and
11 summarily adopt[s] the magistrate judge’s analysis in [the] report and recommendation.”
12 *United States v. Ramos*, 65 F.4th 427, 433 (9th Cir. 2023). In so doing, district courts are
13 “not obligated to explicitly address [the] objections.” *Id.* at 437.

14 The R&R is **ADOPTED** and Kessack’s application to proceed in forma pauperis
15 is **GRANTED**. His § 1983 claim against the Department of Corrections is **DISMISSED**
16 without prejudice and without leave to amend, and that defendant shall be terminated
17 from this action. Kessack’s claims against the remaining individual defendants shall
18 proceed. Kessack should obtain summonses from the Clerk and arrange for service
19 consistent with the Federal Rules of Civil Procedure and the *in forma pauperis* statute.

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1 **IT IS SO ORDERED.**

2 Dated this 8th day of April, 2025.

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BENJAMIN H. SETTLE
6 United States District Judge
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